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July 30, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYEX PARTE

Mr. Jonathan Reel  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Reel:

At our last meeting regarding the Commission's remand proceeding in the above-referenced docket, you asked several questions about the configuration of telephone networks on multi-dwelling unit ("MDU") properties. This letter responds to those questions.

**First, the Commission should make no mistake about it — most MDU on-property networks continue to be configured to multiple demarcation points, which are inaccessible to new entrants.** Although there is no single configuration that describes all MDU wiring configurations, the diagram in attachment 1 hereto is illustrative of a typical MDU on-property network configuration. As the diagram makes clear, each new entrant seeking to provide service on the property must rewire a large segment of the property, which may be completely impractical given the distances involved, the existence of mature landscaping, and other amenities (e.g., swimming pools, tennis courts) that preclude new trenching. The result is, in MDUs configured to multiple demarcation points, there is little prospect of competitive telecommunications services being offered.<sup>1</sup>

Thus, as OpTel noted in its comments in this proceeding, in order to make interconnection with on-property distribution facilities practical, carriers should be required to establish a single point of interconnection ("SPOI") at the property line, or

<sup>1</sup> Because approximately 28% of U.S. homes are in MDUs, the anticompetitive configuration of MDU on-property wiring forecloses a large segment of the market from competition. See The Changing Status of Competition to Cable Television, GAO Report to the Senate Subcommittee on Antitrust, Business Rights, and Competition (July 1999) at 25.

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at a nearby street cabinet, of any MDU at which a competing carrier seeks to provide service. The diagram in attachment 2 illustrates such a configuration. The on-property network, then, should be made available as a UNE. At MDUs at which an SPOI has been established, any carrier with a customer on the property would be able to interconnect at the SPOI and provide service without rewiring the entire property.

During our meeting, the question was asked whether, in fact, Section 68.3 of the Commission's rules, which defines the demarcation point between "telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises," 47 C.F.R. § 68.3, does not already lead ILECs to configure MDU wiring in a pro-competitive fashion. The answer, unequivocally, is "no."

The rules regarding the telephone demarcation point were adopted to promote competition in the provision of CPE, not competitive local exchange service. As a result, they contain a number of "loopholes" that allow ILECs to continue to wire MDU properties to multiple, inaccessible demarcation points.

Under Section 68.3, the "minimum point of entry" ("MPOE") is defined in accordance with each ILEC's "reasonable and non-discriminatory operating practices." In MDU networks existing as of August 13, 1990, the demarcation point or points on the property are determined solely by the ILEC's operating practices. 47 C.F.R. § 68.3(b)(1). In MDU networks installed or rebuilt after August 13, 1990, the ILEC may adopt the practice of placing the demarcation point at the MPOE, 47 C.F.R. § 68.3(b)(2), but again, the ILEC is permitted to define the MPOE in accordance with its standard operating practices.

The net result of the rule is that ILECs have wide latitude to establish the demarcation point or points on MDU properties and, even where it is at one or more "MPOEs," the ILEC generally may determine the location of the MPOE or MPOEs. The only qualification is that the ILEC's operating practices must be "reasonable and non-discriminatory." That qualification, however, has proven to be of little practical effect. In fact, the ILEC "practice" often is to establish a demarcation point at each building on an MDU campus, or at each floor in each building, or at the first jack in each unit of each building — technically in compliance with Section 68.3, but foreclosing competitive entry on the property.<sup>2</sup>

**Second, the Commission should not be put-off by ILEC claims that unbundling on-property network is technically infeasible.** To the contrary, there is no technical barrier to the unbundling of on-property distribution facilities. As the Commission has noted, "successful interconnection or access to an unbundled element

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<sup>2</sup> As the Commission later clarified, the standard operating practices to which Section 68.3(b) refers are those practices in effect on August 13, 1990. Review of Sections 68.104 and 68.213, 12 FCC Rcd 11897, 11915 (1997).

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at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point."<sup>3</sup> In the case of MDU on-property distribution facilities, these facilities have been, and are being, made available to OpTel and other CLECs in some markets where the ILEC has been directed or compelled to do so.<sup>4</sup>

Further, and in any event, to the extent that technical problems arise in the course of providing access to unbundled on-property network, there already are mechanisms built into standard interconnection agreements to address these issues. For example, as evidenced by the attached sample interconnection agreements of SBC Communications Inc. and Ameritech Corporation (attachments 4 & 5), there are both formal and informal dispute resolution procedures, including provisions relating to dispute escalation and arbitration, that govern technical disputes between the parties.

In short, unbundling on-property wiring does not present novel interconnection issues and the technical objections that have been raised are nothing more than red herrings. ILECs are resisting reconfiguration of MDU networks to an SPOI, and the unbundling of those networks, for only one reason — it would result in real, facilities-based competition on MDU properties.

Respectfully,



Michael E. Katzenstein  
Vice-President and General Counsel  
OpTel, Inc.

cc: Magalie R. Salas, Secretary

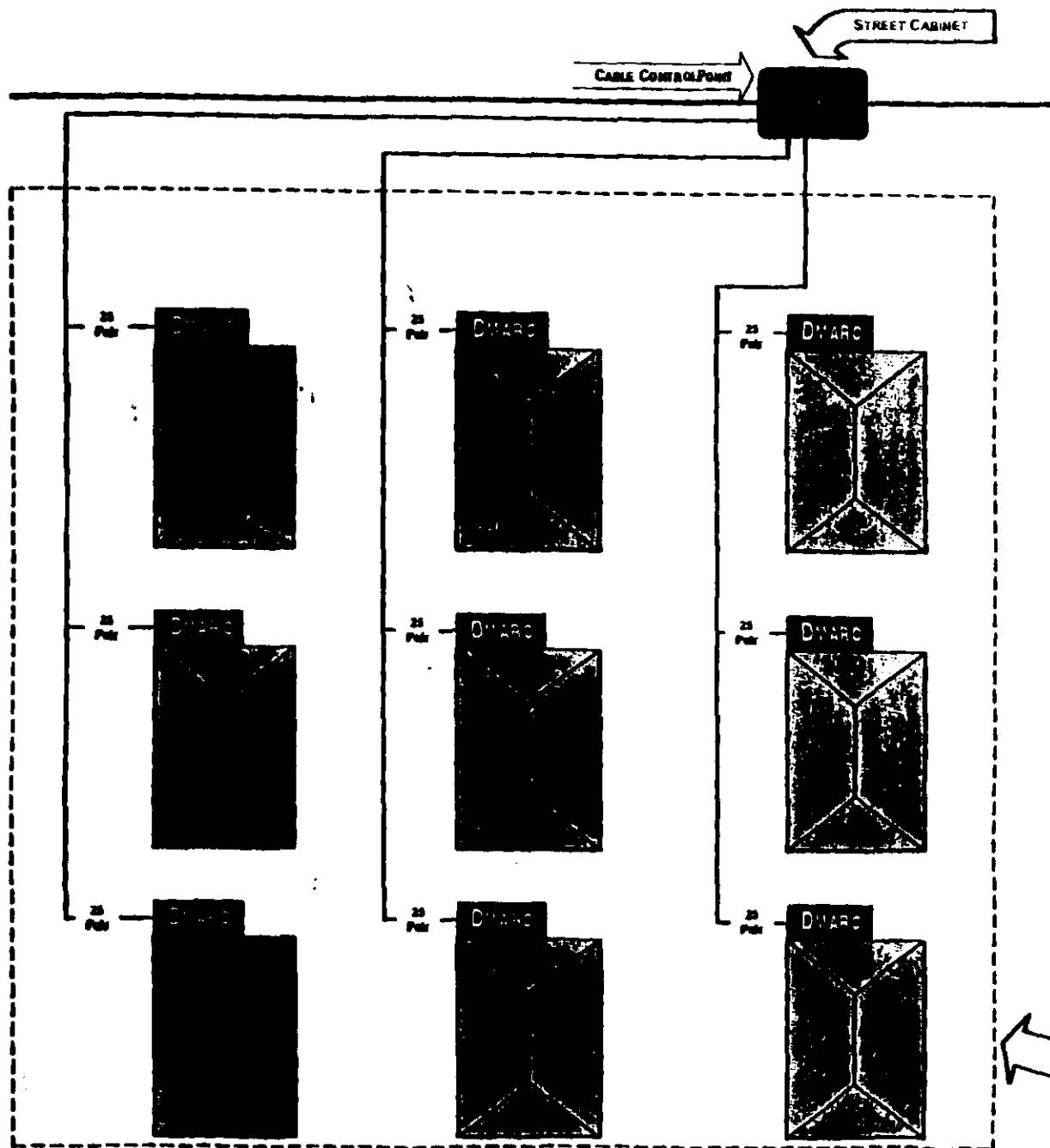
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<sup>3</sup> First Interconnection Order, 11 FCC Rcd at 15606; see also id. at 15602 (preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points").

<sup>4</sup> In the few markets in which ILECs have agreed to provide access to on-property wiring, they do so only if the CLEC will pay exorbitant monthly rates approaching the rate for an entire loop facility. See, e.g., Letter from Pam O'Connell, Account Manager for US WEST, to Mark Buck, OpTel (July 15, 1999) (attachment 3).

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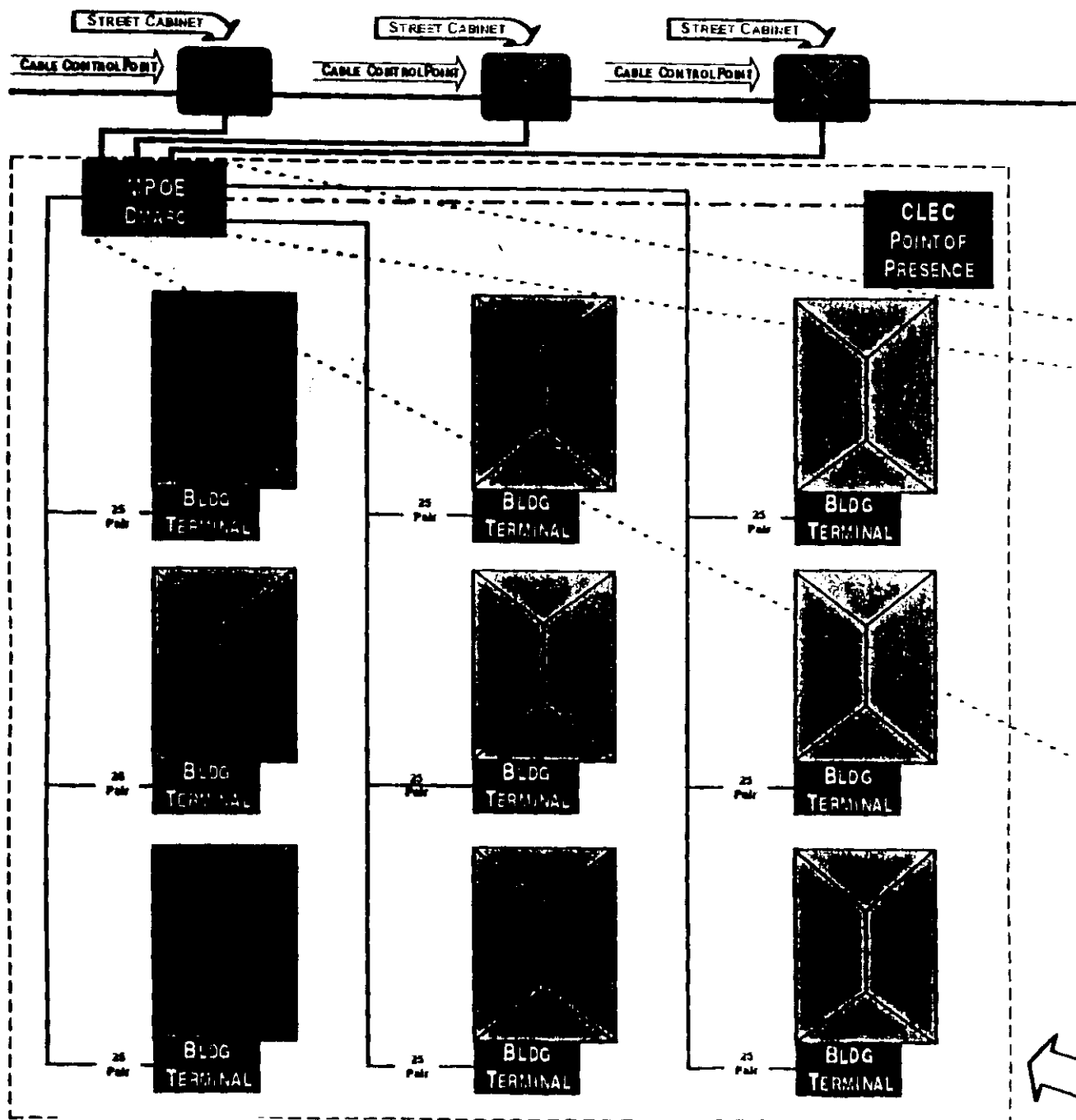
**Attachment 1**  
**(Typical MDU Campus Distribution)**



# TYPICAL MDU CAMPUS DISTRIBUTION

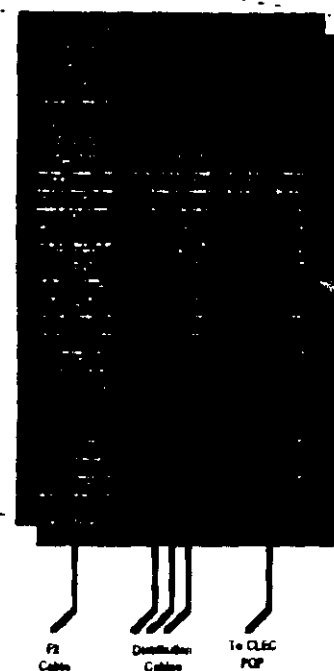
NOTE: Restrict Competitive Access

**Attachment 2**  
**(Pro-Competitive MDU Campus Distribution)**



## PRO COMPETITIVE PROPERTY ACCESS

Cabinet Demarc Point  
MPOE



CLEC Performs Cross  
Connects to Distribution  
Network Elements

PROPERTY LINE -  
PUBLIC RIGHT OF WAY

### **Attachment 3**

**(Letter Re: US WEST Rates For MDU Campus Distribution)**



Wholesale Local Markets

**USWEST**

July 15, 1999

Mark Buck  
Optel  
15795 N. 76<sup>th</sup> Street  
Scottsdale, AZ 85260

Dear Mark:

On April 8<sup>th</sup> U S WEST sent you a letter outlining a proposal that would provide Optel access to residents at several multiple dwelling unit (MDU) properties in Arizona. The properties addressed in that request were:

Fiesta Park Apartments - 1033 S. Longmore, Mesa  
Epernay Apartments - 944 West Main St., Mesa  
Hidden Village Apartments - 8605 N. 59<sup>th</sup> Ave., Glendale  
Quail Point Apartments - 3045 N. 67<sup>th</sup> Ave., Phoenix

Following are the quotes for the special construction required at each property. The quotes include the price of the retrofit cabinet and the RELTEC cabinet that will be placed on these properties; as well as labor and material costs associated with this work.

|                           |             |
|---------------------------|-------------|
| Fiesta Park Apartments    | \$39,774.23 |
| Epernay Apartments        | 43,554.06   |
| Hidden Village Apartments | 37,554.99   |
| Quail Point Apartments    | 8,639.05    |

Total: \$129,522.33

In addition, the monthly recurring lease rate for the intra-building cable is \$15.44 per loop; the nonrecurring installation charge for the intra-building cable is \$40.92.

Please call me at 303-965-9303 if you have any questions.

Sincerely,



Pam O'Connell

Account Manager Wholesale Markets

Cc: Wanda O'Connor, General Mgr., Optel, Inc.  
Wayne Spohn, General Mgr., U S West  
Chris Rau, Senior Acct. Mgr., U S West

## **Attachment 4**

**(Proposed SBC Communications Inc. Interconnection Agreement)**

### 30.12 Disputed Amounts.

~~30.12.1 No claims, under this Agreement or its Appendices, shall be brought for disputed amounts more than twenty four (24) months from the date of occurrence which gives rise to the dispute. Under this Section 30.12, if any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Billed Party") shall within sixty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Billed Party shall pay when due: (i) all undisputed amounts to the Billing Party; and (ii) all Disputed Amounts to Billing Party.~~

~~30.12.2 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.~~

~~30.12.3 If the Parties are unable to resolve issues related to the Disputed Amounts within forty five (45) days after the Parties' appointment of designated representatives pursuant to Section 30.12.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.~~

~~30.12.4 The Parties agree that all negotiations pursuant to this Section 30.12 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.~~

~~30.12.5 Any undisputed Party. Any amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of: (i) one and one-half percent (1-1/2%) one-half percent (1-1/2%) interest per month; or (ii) the highest rate of interest that may be charged under applicable law.~~

If the Billed Party prevails with regard to any of the amount disputed, it shall be entitled to interest on such amount from date of payment at the lesser of (i) one and one-half percent (1-1/2%) per month; or (ii) the highest rate of interest that may be charged under applicable law.

### 30.13 Dispute Resolution.

#### 30.13.1 Finality of Disputes

~~No~~ 30.13.1.1 Except as otherwise specifically provided for in this Agreement, no claims shall will be brought for disputes arising underfrom this Agreement or its Appendices more than twenty four (24) 24 months from the date of the occurrence which gives rise to the dispute.

dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

### 30.13.2 Alternative to Litigation

~~30.13.2 For disputes other than disputed amounts under this Agreement~~

30.13.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

### 30.13.3 Commencing Dispute Resolution

30.13.3.1 Dispute Resolution shall commence upon the sending from one Party to the other of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party.

### 30.13.4 Informal Resolution of Disputes

~~Appendices, each Party shall appoint a designated~~ 30.13.4.1 When such written notice has been given, as required by Section 30.13.3.1, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

### 30.13.5 Formal Dispute Resolution

~~as set forth in Section 30.12.2 and if~~ 30.13.5.1 If the Parties are unable to resolve the dispute,  
~~proceed as set forth in Section 30.12.3.~~

dispute through the informal procedure described above in Section 30.13.4, then either Party may invoke the following formal Dispute Resolution procedures. Unless agreed upon by the Parties, formal dispute resolution procedures described below, including

arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) days after the date of the letter initiating dispute resolution under Section 30.13.3.1.

30.13.5.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal dispute resolution, will be subject to mandatory arbitration pursuant to Section 30.13.6 below:

30.13.5.2.1 All unresolved billing disputes involving one (1) percent or less of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the dispute arises. During the first Contract Year the Parties will annualize the initial months up to one year.

30.13.5.2.2 All other claims involving one (1) percent or less of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the matter in dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.

30.13.5.3 Claims Subject to Elective Arbitration. The following claims will be subject to arbitration pursuant to Section 30.13.6 if, and only if, the claim is not settled through informal dispute resolution and both parties agree to arbitration. If both parties do not agree to arbitration, then either party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

30.13.5.3.1 All unresolved billing disputes involving more than one (1) percent of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the matter in dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligation relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.

30.13.5.3.2 All other claims involving more than one (1) percent of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the matter in dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.

30.13.5.4 Claims Not Subject to Arbitration If the following claims are not resolved through informal dispute resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

30.13.5.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

30.13.5.4.2 Actions to compel compliance with the Dispute Resolution process.

30.13.5.4.3 All claims arising under federal or state statute(s), including, but not limited to, antitrust claims.

### 30.13.6 Arbitration

30.13.6.1 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. Each arbitration will be held in Dallas, Texas, unless the parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement. The arbitrator shall be knowledgeable of telecommunications issues. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

### 30.13.7 Billing Disputes

#### 30.13.7.1 The following provisions apply specifically to billing disputes.

30.13.7.1.1 The Parties agree that all bills, including bills disputed in whole or in part, are to be paid when due, that interest applies to all overdue invoices as set forth in the applicable provisions of this Agreement, and that no other late payment fee or charge applies to overdue invoices. The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive, by crediting or otherwise, interest applied to the disputed amount as set forth in the applicable provisions of this Agreement.

30.13.7.1.2 To the extent that any other portions of this Agreement provide for a bill closure process between the parties, or if such a process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of Section 30.13—Dispute Resolution.

30.13.7.1.3 Each Party agrees to notify the other Party of a billing dispute and may invoke the informal dispute resolution process described in Section 30.13.2. The parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, or, if the charges have been subject to the bill closure process described in Section 30.13.5.1, above, within sixty (60) calendar days of the closure of the billing period covered by such bill closure process.

#### 30.13.8 No Conflict

30.13.8.1 The Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

**30.14 Notices.** Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally; on the date receipt is acknowledged in writing by the recipient if delivered by regular mail; or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission as reflected in the facsimile confirmation sheet. "Business Day" shall mean Monday through Friday, ~~SWBT/Optel~~ SWBT/CLEC holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section, except that notices to a Party's

## **Attachment 5**

**(Ameritech Corporation Interconnection Agreement)**



in funds which are not immediately available to the other Party as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge shall be assessed. Past Due amounts shall accrue interest as provided in Section 27.6. Any late payment charges assessed on Disputed Amounts shall be paid or credited, as the case may be, as provided in Section 28.2.2. In no event, however, shall interest be assessed on any previously assessed late payment charges.

#### 27.5 Adjustments.

27.5.1 A Party shall promptly reimburse or credit the other Party for any charges that should not have been billed to the other Party as provided in this Agreement. Such reimbursements shall be set forth in the appropriate section of the invoice.

27.5.2 A Party shall bill the other Party for any charges that should have been billed to the other Party as provided in this Agreement, but have not been billed to the other Party ("Underbilled Charges"); provided, however, that, except as provided in Article XXVIII, the Billing Party shall not bill for Underbilled Charges which were incurred more than one (1) year prior to the date that the Billing Party transmits a bill for any Underbilled Charges. Notwithstanding the foregoing, OpTel shall not be liable for any Underbilled Charges for which Customer Usage Data was not furnished by Ameritech to OpTel within ten (10) months of the date such usage was incurred.

27.6 **Interest on Unpaid Amounts.** Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the number of days from the Bill Due Date to and including the date that payment is actually made and available.

### ARTICLE XXVIII AUDIT RIGHTS, DISPUTED AMOUNTS AND DISPUTE RESOLUTION

#### 28.1 Audit Rights.

28.1.1 Subject to the restrictions set forth in Article XX and except as may be otherwise specifically provided in this Agreement, a Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, data and other documents, as provided herein, once annually (commencing on the Service Start Date) for the purpose of evaluating the accuracy of Audited Party's billing and invoicing of the services provided hereunder. The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the Audit which was last performed (or if no audit has been performed, the Service Start Date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the Service Start Date. Such audit shall begin no fewer than thirty (30) days after Audited Party receives a written notice requesting an audit and shall be

completed no later than thirty (30) days after the start of such audit. Such audit shall be conducted by an independent auditor acceptable to both Parties. The Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. Notwithstanding the foregoing, an Auditing Party may audit Audited Party's books, records and documents more than once annually if the previous audit found previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit.

28.1.2 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the independent auditor reasonable access to any and all appropriate Audited Party employees and books, records and other documents reasonably necessary to assess the accuracy of Audited Party's bills. No Party shall have access to the data of the other Party, but shall rely upon summary results provided by the independent auditor. Audited Party may redact from the books, records and other documents provided to the independent auditor any confidential Audited Party information that reveals the identity of other Customers of Audited Party. Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

28.1.3 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) for any overpayment promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of or failure to act by the Audited Party, immediately compensate Auditing Party for such undercharge, in each case with interest at the lesser of (x) one and one-half (1½%) percent per month and (y) the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available, as the case may be. Notwithstanding the foregoing, OpTel shall not be liable for any Underbilled Charges for which Customer Usage Data was not furnished by Ameritech to OpTel within ten (10) months of the date such usage was incurred.

28.1.4 Audits shall be at Auditing Party's expense, subject to reimbursement by Audited Party in the event that an audit finds, and the Parties subsequently verify, adjustment in the charges or in any invoice paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the audited services during the period covered by the audit.

28.1.5 Any disputes concerning audit results shall be referred to the Parties' respective responsible personnel for informal resolution. If these individuals cannot resolve the dispute within thirty (30) days of the referral, either Party may request in writing

that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 28.1.1. Any additional audit shall be at the requesting Party's expense.

## 28.2 Disputed Amounts.

28.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item; provided, however, a failure to provide such notice by that date shall not preclude a Party from subsequently challenging billed charges. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. Notwithstanding the foregoing, except as provided in Section 28.1, a Party shall be entitled to dispute only those charges for which the Bill Due Date was within the immediately preceding twelve (12) months of the date on which the other Party received notice of such Disputed Amounts.

28.2.2 If the Non-Paying Party disputes a charge and does not pay such Disputed Amounts by the Bill Due Date, such Disputed Amounts shall be subject to late payment charges as set forth in Section 27.4. If the Non-Paying Party disputes charges and the dispute is resolved in favor of such Non-Paying Party, the Billing Party shall credit the invoice of the Non-Paying Party for the amount of the Disputed Amounts along with any applicable late payment charges assessed no later than the second Bill Due Date after the resolution of the Dispute. Accordingly, if a Non-Paying Party disputes charges and the dispute regarding the Disputed Amounts is resolved in favor of the Billing Party, the Non-Paying Party shall pay the Billing Party the amount of the Disputed Amounts and any associated late payment charges assessed no later than the second Bill Due Date after the resolution of the dispute regarding the Disputed Amounts. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

28.2.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Disputed Amounts and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Disputed Amounts and negotiate in good faith in an effort to resolve such Disputed Amounts. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

28.2.4 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.2.3, then either Party may file a complaint with the

Commission to resolve such issues or proceed with any other remedy available to the Parties. The Commission or the FCC or a court of competent jurisdiction may direct payment of any or all Disputed Amounts (including any accrued interest) thereon or additional amounts awarded plus applicable late fees, to be paid to either Party.

28.2.5 The Parties agree that all negotiations pursuant to this Section 28.2 shall remain confidential in accordance with Article XX and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

28.3 **Dispute Escalation and Resolution.** Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section 28.3. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint within five (5) Business Days after a Party's receipt of such request a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, either Party may seek any relief it is entitled to under Applicable Law. Notwithstanding the foregoing, in no event shall the Parties permit the pending of a Dispute to disrupt service to any OpTel Customer or Ameritech Customer.

28.4 **Equitable Relief.** Notwithstanding the foregoing, this Article XXVIII shall not be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders, if, in its judgment, such action is necessary to avoid irreparable harm. Despite any such action, the Parties will continue to participate in good faith in the dispute resolution procedures described in this Article XXVIII.

## **ARTICLE XXIX REGULATORY APPROVAL**

29.1 **Commission Approval.** The Parties understand and agree that this Agreement will be filed with the Commission for approval by such Commission pursuant to Section 252 of the Act. Each Party agrees that this Agreement is satisfactory to them as an agreement under Sections 251 and 252 of the Act. If the Commission, the FCC or any court rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion and related provisions; provided that such rejected portion shall not affect the validity of the remainder of this Agreement.